

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 18, 2018

In re TURYN/PORTEOUS-TURYN, Minors.

No. 342824
Genesee Circuit Court
Family Division
LC No. 15-132183-NA

Before: O'BRIEN, P.J., and K.F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor children, KT and CP, pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (c)(ii) (failure to rectify other conditions), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). We affirm.

This case arose when KT was removed from the care of her mother in May 2015 based on the mother's substance abuse. KT was initially placed with respondent, but removed from respondent's care in November 2015 based on a domestic violence incident involving respondent and his girlfriend. KT was then placed with her maternal grandmother, Karolyn Porteous (Porteous). Despite a no-contact order between respondent and the mother, CP was born in June 2016. In November 2016, CP was also placed with Porteous. Thereafter, the permanency planning goal changed to termination with regard to KT, but remained as reunification for CP. In April 2017, the goal was changed to guardianship for both children and services (other than parenting time) were discontinued. In October 2017, however, because Porteous no longer wanted to pursue a guardianship, the goal was changed to termination for both children and services were reinstated. At the termination trial, there was evidence that respondent had made some progress with his case service plan, including obtaining income and housing, and had no recent domestic violence incidents. Respondent, however, continued to struggle with substance abuse, his mental health, and the ability to properly parent. The trial court found that termination

was warranted pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), and that termination was in the children's best interests.¹

I. STATUTORY GROUNDS FOR TERMINATION

Respondent contends that the trial court clearly erred by finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) were established by clear and convincing evidence. We disagree.

“To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence.” *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 635; 853 NW2d 459 (2014) (citation and quotation marks omitted). “This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination. The trial court’s factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.” *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014) (citations omitted). “A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses.” *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

The trial court found that termination of respondent’s parental rights was warranted under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Those provisions authorize termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

¹ At the close of the termination trial, the mother’s attorney indicated that the mother would execute a direct release of her rights to the children. The mother has not filed a claim of appeal.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.^[2]

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3).]

With regard to MCL 712A.19b(3)(c)(i) and (ii), at the time of the termination trial, more than 182 days had elapsed since the issuance of the initial dispositional orders. With regard to KT, the initial dispositional order was entered on November 19, 2015, when respondent entered a no-contest plea to the allegations in the supplemental petition. With regard to CP, the initial dispositional order was entered on November 15, 2016, when respondent entered a plea to certain allegations in the petition, and the trial court found a sufficient basis to take jurisdiction over CP.³ Services were stopped for approximately six months (from April 19, 2017, to October 20, 2017) when the permanency planning goal was changed to guardianship for both children. After the goal was changed to termination at the October 20, 2017 hearing, respondent's case service plans were reinstated. There were approximately four months of services before the termination trial began on February 27, 2018. Despite the gap in services, respondent was given more than 182 days with regard to each child to rectify the conditions that brought them into care.

With regard to MCL 712A.19b(3)(c)(i), the trial court did not clearly err by finding that respondent's substance abuse and mental health were conditions that led to the adjudication, the conditions continued to exist, and there was no reasonable likelihood that they would be rectified within a reasonable time considering the children's ages. With regard to KT, she was removed because of a domestic violence incident, and the trial court ordered respondent to obtain and maintain a legal source of income, obtain and maintain suitable housing, participate in random drug screens, maintain contact with the worker, sign all releases, attend supervised parenting time, participate in the supportive visitation program, complete a psychological evaluation and follow the recommendations, participate in substance abuse counseling and treatment, participate in domestic violence classes, and follow all terms of his probation. The foster care worker, Georgia Smith, testified that CP was never placed with respondent because, when respondent's

² MCL 712A.19b(3)(g) has been amended, effective June 12, 2018. See 2018 PA 58. The current version of MCL 712A.19b(3)(g) replaces "without regard to intent" with "although, in the court's discretion, financially able to do so[.]"

³ The order was entered *nunc pro tunc* on January 23, 2017, after the affidavit of parentage was filed. The trial court, however, stated at the November 15, 2016 pretrial hearing that services could be offered and respondent could voluntarily engage in those services until the plea was accepted.

paternity was established, he continued to lack appropriate housing and have issues with substance abuse, lack of mental health services, employment, and parenting skills. At that time, the Department of Health and Human Services (DHHS) recommended that respondent continue to participate in substance abuse treatment and random drug screens, participate in parenting classes for infants, and have supervised parenting time twice a week. The trial court ordered respondent to participate and show benefit from reunification services, substance abuse treatment, random drug screens, parenting classes for infants, and supervised parenting time. Smith testified that the services included in respondent's parent-agency treatment plan, which was reinstated in 2017, included substance abuse treatment, random drug screens, mental health services, obtaining and maintaining appropriate housing, obtaining and maintaining a legal source of income, and supervised parenting time. Thus, while domestic violence was the primary reason that KT was brought into care, respondent's substance abuse and mental illness were identified as issues when the trial court took jurisdiction over her and they remained problems throughout the case.

With regard to respondent's mental health, he completed a psychological evaluation in 2016 and was recommended for individual therapy. There is no evidence that he completed therapy. When services were reinstated in November 2017, respondent was sent for an intake at Genesee Health System (GHS), but he informed Smith that he was denied services because they were not necessary. Smith, however, expressed concern regarding respondent's truthfulness during the intake because his psychological evaluation had recommended individual therapy. Based on respondent's own testimony, he continued to struggle with anxiety, for which he obtained a medical marijuana card at one point. After the denial of services from GHS, however, respondent was never referred for other services. Thus, while there was evidence that respondent continued to have mental health issues, it is not clear that respondent's failure to rectify this condition was entirely his fault.

Nonetheless, respondent's substance abuse problem was clearly not rectified despite the provision of services and reasonable opportunity. After the case service plans were reinstated in October 2017, respondent was offered approximately 32 drug screens before trial, but he only submitted to five screens. Of those screens, two were positive for Suboxone, one was positive for cocaine, and one was positive for THC. Respondent provided a prescription for Suboxone, but Smith was not able to verify the prescription with respondent's doctor. Respondent also admitted that he occasionally used marijuana, despite the fact that his medical marijuana card had expired. He denied having used cocaine in November 2017, despite the positive screen on November 13, 2017.

The trial court found it concerning that respondent was still using Suboxone because it was a "substitute for an underlying drug." There was, however, no evidence that respondent's use of Suboxone was problematic if it was prescribed for treatment. Nonetheless, his continued use indicated that the issue was not fully rectified. The trial court additionally found that respondent's illegal use of marijuana was a problem. However, at an earlier hearing, respondent effectively admitted using marijuana, yet the referee recommended supervised visitation, with discretion for DHHS to allow unsupervised parenting time. Moreover, respondent testified that he had a valid medical marijuana card at some point. Nonetheless, respondent's admitted use of marijuana without a valid medical marijuana card was cause for concern because, as he admitted, he could be arrested and jailed for such illegal use. Additionally, his testimony that he believed

it was “better to relapse on marijuana than to a hard drug” suggested that he continued to have substance abuse issues. Of greatest concern was respondent’s positive screen for cocaine in December 2017 and his failure to submit to the majority of the screens, which meant that it was unknown whether he was using other substances. Again, respondent denied the cocaine use, despite the positive test. He also claimed to be attending screens at Recovery Pathways and was unaware that he was required to submit to screens for DHHS. Nonetheless, respondent’s positive screen for cocaine and failure to submit to all drug screens supports the trial court’s finding that respondent’s substance abuse was not rectified and would not be rectified within a reasonable time.

Respondent’s ability to properly parent the children was also an ongoing issue. When the trial court took jurisdiction over KT, respondent had already voluntarily completed parenting classes, but he was recommended for a supportive visitation program. After CP was born, DHHS also recommended infant parenting classes. Despite participating in parenting classes, issues with respondent’s ability to properly parent the children were raised at numerous hearings. Therefore, the trial court properly found that, while parenting skills might not fall under MCL 712A.19b(3)(c)(i) as a condition that led to the adjudication, it properly came under MCL 712A.19b(3)(c)(ii) as a condition that exists that would establish jurisdiction, see MCL 712A.2(b), and which respondent had not rectified, despite receiving recommendations and a reasonable opportunity to do so.

At the termination trial, Smith testified that, since October 2017, respondent continued to struggle with parenting both children at the same time and getting the children to engage together. He had a bond with KT, but struggled to bond with CP and only recently had been interacting more with CP. He often brought things for KT, but not CP. He did not participate in outside activities, such as parent-teacher conferences, medical appointments, dental appointments, extra-curricular activities, and Early On appointments. Even when Smith made respondent a calendar of the children’s activities, he attended only two or three of KT’s gymnastics classes, but no Early On appointments. Respondent did not visit CP when he was seriously ill in the hospital. He did not call the children outside of his visits. Smith testified that respondent was good with visiting for an hour, but there was concern with him taking on the children, especially when CP required breathing treatments every day.

Further, the main parenting issue was the inappropriate statements that respondent made to KT, in violation of the court’s order, which caused her to experience anxiety and post-traumatic stress disorder (PTSD). Porteous testified that, a year earlier, KT broke out in hives, became sick to her stomach, and did not want to go to school after visits with respondent. At the time of the termination trial, KT had stopped vomiting after visits, but still cried and had stomach aches. It was determined that visits with respondent triggered KT’s PTSD. Smith testified that there was still an issue with respondent talking about the foster-care case. Respondent’s harmful statements were an ongoing issue and the trial court did not clearly err by finding that respondent’s improper parenting was not likely to be rectified within a reasonable time.

With regard to MCL 712A.19b(3)(g) and (j), the trial court did not clearly err by finding that respondent could not provide proper care and custody and that the children would be at risk of harm if returned to him. For all of the reasons discussed above, respondent’s continued substance abuse and parenting issues made him unable to provide proper care and custody and

put the children at risk of harm. See *In re White*, 303 Mich App at 710-711 (stating that a parent's failure to participate and benefit from a service plan is evidence that the parent will not be able to provide proper care and custody, and a parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home). Moreover, there was evidence that respondent's inappropriate statements to KT had caused actual harm to her. Thus, the trial court did not terminate respondent's parental rights based on "the mere possibility of future harm," as respondent claims. Rather, the trial court did not clearly err by finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) were established by clear and convincing evidence.

II. BEST INTERESTS

Respondent also contends that the trial court clearly erred by finding that termination of his parental rights was in the best interests of the children. We disagree.

"The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App at 713. "We review for clear error the trial court's determination regarding the children's best interests." *Id.*

In *In re White*, 303 Mich App at 713-714, this Court stated:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [Citations omitted.]

In this case, the trial court found that, despite the bond that existed with KT and that was forming with CP, as well as the children's placement with a relative, respondent's statements causing distress to KT made termination in the children's best interests. The trial court properly noted that there were separate considerations for each child and that the children were with a relative who was willing to work with respondent.⁴

With regard to KT, it was clear that respondent had a strong bond with her. However, the inappropriate statements that he made to her caused her significant harm. While respondent

⁴ Contrary to respondent's contention in his brief on appeal, the trial court did, during its best interest analysis, consider the fact that KT and CP were placed with a relative. *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012).

argues that KT may have just been sad to see respondent leave, the evidence suggested that this was not the case. There was evidence that she was not upset when respondent did not visit at all and that she did not miss him when they went on vacation. Smith testified that KT said that she did not feel safe with respondent and wanted to live with Porteous. It is true that respondent had a house and a job, and there were no recent domestic violence issues. Contrary to his assertion, however, the trial court stated that he was a good *noncustodial* parent. As the court explained, respondent visited the children, but was not involved in any activities or medical appointments. This was consistent with respondent's own testimony that he did not want to "take" KT, but just be able "to see her every once in a while." Smith testified that KT needed stability and Porteous believed that respondent could not provide stability.

With regard to CP, the trial court did not make extensive findings. The trial court initially noted that there was less of a bond with CP, but then focused on the harmful statements made to KT before concluding that termination was in the best interests of both children. Nonetheless, there was substantial evidence that termination of respondent's parental rights was in CP's best interest. Respondent lacked a strong bond with CP and was only recently interacting more with him. Respondent would often bring things for KT, but not CP, and did not visit CP when he was in the hospital with serious illnesses or attend his medical appointments. Respondent's own testimony illustrated the lack of bond and concern he had for CP. In explaining what he wanted, respondent testified, "all I want to do is see my daughter, I'm not asking to take her or anything. I just want to see her every once in a while." He failed to even mention CP. Additionally, the inappropriate statements that respondent made to KT supported the best-interest determination with regard to CP. CP was too young for respondent to make such statements to him, but given that respondent continually made such statements to KT, there was a strong possibility that he would make similar statements to CP when he was older.

Other factors also weighed in favor of termination with regard to both children. Respondent continued to struggle with substance abuse, had a history of domestic violence, failed to comply with his case service plans, and had a history of inconsistent visitation with the children. Furthermore, there was evidence that Porteous provided a good home for the children and had support from her family and friends. Respondent testified that he had no support and had to do everything on his own. While Porteous expressed a desire to adopt the children, the trial court noted a concern that Porteous would not be selected as the adoptive parent because of her age. Nonetheless, the trial court considered this factor and determined that termination was in the children's best interests. We conclude that the trial court's determination is not clearly erroneous.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood